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**BRIEF OF EVIDENCE OF JAMES HENRY ADAMS**  
**MW – MANA WHENUA**

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**Qualifications and Experience**

- 1 My name is James Henry Adams, and I am a Senior Strategic Analyst employed by Otago Regional Council. I hold a Bachelor of Laws and a Bachelor of Arts from Otago University.
- 2 I have around 8 years of resource management and planning experience, based at Otago Regional Council. During this time, I have worked mainly on Regional Policy Statements, both the Partially Operative Otago Regional Policy Statement 2019 and the proposed Otago Regional Policy Statement 2021. This has included associated reports and participating in Environment Court processes such as expert conferencing and mediation.
- 3 I have been involved in the review of the Partially Operative Otago RPS 2019 and the preparation of the pORPS 2021 since late 2019. I have been involved in drafting various sections of the pORPS, the section 32 evaluation report, and the section 42A report, as well as being involved in community, stakeholder, and mana whenua engagement processes.

**Code of Conduct**

- 4 I have read and agree to comply with the Environment Court's Code of Conduct for Expert Witnesses, contained in the Environment Court Practice Note 2014. I have complied with the code in preparing my evidence. Other than where I state that I am relying on the advice of another person, I confirm that the issues addressed in this statement of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
- 5 I note that I am not an expert in Kāi Tahu values, tikaka and mātauraka. My expertise in relation to matters set out below relates solely to the resource management policy implications of those matters.

## Scope of Evidence

- 6 I raised several points in my s42A report regarding the MW chapter that required further clarification before I felt able to make a recommendation. Following pre-hearing discussions and further consideration I am now able to provide further comment on those matters, as set out below.
- 7 I have reconsidered some parts of my section 42A report following discussion with parties and further information coming to light.
- 8 My evidence addresses:
- 8.1 Updates on points for clarification,
  - 8.2 A new definition of Māori land,
  - 8.3 New proposed amendments to provision wording, and
  - 8.4 A minor amendment.
- 9 I have evaluated the changes in accordance with s32AA of the RMA where necessary.
- 10 Amendments are indicated as follows:

Appearance	Explanation
Black text	Text as notified.
Black text with <u>underlining</u> or <del>strikethrough</del>	Amendments recommended in section 42A report.
Red text with <u>underlining</u> or <del>strikethrough</del>	Additional amendments recommended in supplementary evidence where there has been no previous amendment to the 'as notified' provision text.
Black text with <u>red</u>	Text that was recommended to be deleted in s42A report but now recommended to be retained ("un-deleted") by supplementary evidence.
Red <del>strikethrough</del> with <u>black underlining</u> .	Text that was recommended to be inserted in s42A report (black underline) but now recommended to be deleted by supplementary evidence (red strikethrough).

## Errata

- 8 Refer to Appendix 2 Table of Errata. These are spelling and editing corrections noted while reviewing my original s42A report for the purposes of writing

supplementary evidence. They do not change the substance or effect of my recommendations or discussion.

## Updates

- 11 I have summarised my points of requested clarification below, accompanied by my updated recommendations. Paragraph references are to my s42A report.
- 12 I consider that the revisions below do not change the substance and effect of the provisions beyond those assessed in the original s32 report for the pORPS. The changes directly reflect the views and values of Kāi Tahu, in keeping with this chapter's purpose.

Should we include explanation/definition of taoka tuku iho or kawa? (Para 22, re: 00138.051 QLDC, see also para 251 regarding taoka tuku iho)

- 13 The term taoka tuku iho is addressed below at paragraph 22.
- 14 I understand from prehearing discussions that the term kawa requires explanation for the sake of clarity, and that this is best done by expanding the discussion of tikaka in the Kāi Tahu values section. I recommend amending this section as follows:

### **Tikaka and kawa<sup>1</sup>**

Tikaka and kawa Māori encompass encompasses<sup>2</sup> the beliefs, values, practices, protocols,<sup>3</sup> and procedures that guide appropriate codes of conduct, or ways of behaving. In the context of natural resource management, observing tikaka and kawa<sup>4</sup> is part of the ethic and exercise of kaitiakitaka. Tikaka and kawa are it is<sup>5</sup> underpinned by a body of mātauraka (traditional knowledge) and are is<sup>6</sup> based on a general understanding that people belong to the land and have a responsibility to care for and manage the land. These concepts and values incorporate it incorporates<sup>7</sup> forms of social control to manage the relationship of people and the *environment*, including concepts such as tapu, noa and rāhui.<sup>8</sup>

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<sup>1</sup> 00138.051 QLDC

<sup>2</sup> 00138.051 QLDC

<sup>3</sup> 00138.051 QLDC

<sup>4</sup> 00138.051 QLDC

<sup>5</sup> 00138.051 QLDC

<sup>6</sup> 00138.051 QLDC

<sup>7</sup> 00138.051 QLDC

<sup>8</sup> 00138.051 QLDC

Tikaka and kawa are is<sup>9</sup> based on traditional practices but are is<sup>10</sup> dynamic and continue continues<sup>11</sup> to evolve in response to different situations.

Is further explanation of mātauraka required? (Para 23, 00420.007 Hopkins, Jim)

- 15 At prehearing discussions, the parties considered that an explanation of mātauraka would be helpful for understanding the pORPS. I recommend adding the explanation after the section on tikaka and kawa, as follows:

**Mātauraka**

Mātauraka, within this region, is Kāi Tahu customary knowledge passed down from one generation to the next, used in the present, and will continue to be developed for the future. It involves observing, experiencing, participating, studying, and understanding the world from an indigenous cultural perspective. It is a tool for thinking, organising information, considering the ethics of knowledge, and informing us about our world and our place in it. Incorporation of mātauraka in resource management decision-making is important to ensure that cultural interests are appropriately recognised and provided for.<sup>12</sup>

Should the definition of papakāika be revised? (Para 26, 00010.003 Cain Whanau)

- 16 I understand from prehearing discussion that the definition of papakāika in the notified pORPS does not adequately represent Kāi Tahu use and understanding of this term. This is a Te Reo term with a specific place in Kāi Tahu tikaka, so I consider that mana whenua have the prerogative to define what it means.
- 17 While the definition is now broader than in the notified pORPS, I do not consider that this changes the s32 assessment of the definitions. I have raised the knock-on effects of this definition for other chapters with the relevant chapter authors, and no concerns have been raised. Knock-on effects for this chapter are discussed in the context of the affected provision below. Accordingly, I recommend the following change to the definition of papakāika in the definitions section, as a response to submissions and further discussion on this point:

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<sup>9</sup> 00138.051 QLDC

<sup>10</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00138.051 QLDC

<sup>11</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00138.051 QLDC

<sup>12</sup> 00420.007 Hopkins, Jim

<b>Papakāika or papakāinga</b>	means <u>subdivision</u> , use and development by mana whenua, <u>either on their own or in conjunction with other parties</u> , of ancestral or tribal lands <u>and associated resources</u> to <u>provide for sustain</u> themselves in <u>general</u> accordance with tikanga Māori, which may include residential activities and non-residential activities for cultural, social, <u>educational</u> , recreational, environmental, or <u>limited</u> commercial purposes. <sup>13</sup>
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Does recognition of Kāi Tahu’s fishing interests require expansion beyond customary ones? (Para 55, re: 00125.013 Otago Rock Lobster)

18 Prehearing discussions have determined that no further changes to the s42A report are required on this point. These interests are sufficiently covered by existing content in the MW chapter discussing mahika kai, kaimoana and customary fisheries, and the section on commercial aquaculture that has been added via s42A amendments.

Can an updated map of native reserves be provided, including spatial information that could be included in the ePlan? (Para 71 and 76, 00226.329 Kāi Tahu ki Otago)

19 Updated maps (see Appendix 2) and shapefiles of native reserves have been provided. I recommend they be included as the first maps in the map section, with the title “MAP0 – Native Reserves”.

20 In addressing these maps in prehearing discussions, several updates were proposed to the related information in Table 1, which describes the areas shown in the maps. I recommend that these changes to Table 1 be made as shown below. The table itself does not have any regulatory effect under the RPS.

21 The row in Table 1 referring to Kakanui is removed as part of these changes. I understand this land is now part of the Moeraki reserve and is no longer required to be included in the table as a separate reserve.

22 At paragraph 73 of my s42A report, I proposed new wording to describe the Hāwea-Wānaka block (Wanaka Plantation Reserve), requested as an addition to Table 1 by Te Rūnanga o Ngāi Tahu (submission number 00234.005). Revised wording has been developed through pre-hearing discussions with Kāi Tahu and is included below.

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<sup>13</sup> All changes to this definition attributable to 00010.003 Cain Whanau

23 I recommend an additional sentence above Table 1 linking to the series of maps as well as changes to Table 1 as follows:

...

The following table lists the reserves in Otago which are also mapped in MAP0 – Native reserves. ...

Location	Comments	Reserve Type
Tautuku	Southern block of Tautuku sections	South Island Landless Natives Act
	Northern sections are Reserved lands	Native Reserve
Glenomaru	Located south of Kaka Point	South Island Landless Natives Act
Maranuku	Granted in 1844 as part of the <del>Otakeu</del> <u>Ōtākou</u> <sup>14</sup> Purchase. Originally called Te Karoro, split into two reserves	Native Reserve
Clarendon	Located inland from Taieri Mouth	Clarendon Half Caste Reserve
<del>Taieri</del> <u>Taieri</u> <sup>15</sup>	Granted in 1844 as part of the <del>Otakeu</del> <u>Ōtākou</u> <sup>16</sup> Purchase Deed. Split into three reserves; A, B and C	Native Reserve
Lake Tatawai	Located on the <del>Taieri</del> <u>Taieri</u> <sup>17</sup> Plain, south of <del>the</del> <sup>18</sup> Dunedin, <u>includes lake that is now drained.</u> <sup>19</sup>	Native Reserve <u>and Landing Reserve</u>
<del>Lake Tatawai</del> <sup>20</sup>	<u>Lake that is now drained</u>	<u>Landing Reserve</u>
Otago Heads Native Reserve	Granted in 1844 as part of the Ōtākou Purchase Deed. Split into four reserves	Native Reserve
Port Chalmers	Granted in 1848 as part of the Ōtākou Purchase Deed. A further grant adjacent to the Reserve was made in approximately 1888	Native Reserve
Aramoana	This reserve resulted from the <del>Purakaunui</del> <u>Pūrākaunui</u> <sup>21</sup> Half Caste grant	Half Caste Reserve
<del>Purakaunui</del> <u>Pūrākaunui</u> <sup>22</sup>	Granted in 1848 as part of Kemp's Purchase Deed. Further allocations were made in 1868 at Wharauwerawera	Native Reserve
Brinns Point	Granted in the latter part of the nineteenth century	Half Caste Reserve

<sup>14</sup> 00226.041 Kāi Tahu ki Otago

<sup>15</sup> 00226.041 Kāi Tahu ki Otago

<sup>16</sup> 00226.041 Kāi Tahu ki Otago

<sup>17</sup> 00226.041 Kāi Tahu ki Otago

<sup>18</sup> Clause 16(2), Schedule 1, RMA

<sup>19</sup> 00226.329 Kāi Tahu ki Otago

<sup>20</sup> 00226.329 Kāi Tahu ki Otago

<sup>21</sup> 00226.041 Kāi Tahu ki Otago

<sup>22</sup> 00226.041 Kāi Tahu ki Otago

<del>Karitane</del> <del>Karitāne</del> ( <del>Waikouaiti</del> <del>Waikōuaiti</del> <sup>23</sup> Native Reserve)	Granted in 1848 as part of Kemp’s Purchase Deed	Native Reserve
Matainaka and Hawksbury Fishing Easement	Two fishing easements fall under this reserve, Matainaka, located at Hawkesbury Lagoon at <del>Waikouaiti</del> <del>Waikōuaiti</del> <sup>24</sup> and the Forks Reserve located inland from <del>Karitane</del> <del>Karitāne</del> . <sup>25</sup> The legal description for the latter reserve is Section 1N Town of Hawksbury	Fishing Easement
Hawksbury	Located north of <del>Waikouaiti</del> <del>Waikōuaiti</del> <sup>26</sup> , in the vicinity of Goodwood	Hawksbury Half Caste Reserve
Moeraki	Granted in 1848 as part of Kemp’s Purchase Deed. Further awards were made in 1868	Native Reserve
Kuri Bush	10 acre reserve of timber	Native Reserve
<del>Kakanui</del> <sup>27</sup>	<del>Granted in 1848 as part of Kemp’s Purchase Deed. By 1853, this Reserve was noted as being abandoned and the 75 acre allocation was added to the southern edge of the Moeraki Native Reserve</del>	<del>Native Reserve</del>
Korotuaheka	Located south of the Waitaki River mouth. Now Reserved as an <del>urupa</del> <del>urupā</del> . <sup>28</sup> It appears this originated as an occupational reserve and Fishing Easement	<del>Partitioned in 1895</del> <del>Possibly awarded as part of the 1868 awards</del>  <del>Native Reserve</del> <del>Fishing Easement</del> <sup>29</sup>
Punaomaru	376 acre reserve located approximately 14 miles from the Waitaki River mouth on the south bank of the river	Native Reserve
Lake Hāwea	Reserve of 100 acres situated in the western extremity of the middle arm of Lake Hāwea near a Lagoon. Part of the Reserve was taken for power development in 1962 and the balance of the land was alienated by the Māori Trustee in 1970	Fishing Easement
<del>Hāwea-Wānaka block (Wānaka Plantation Reserve)</del> <sup>30</sup>	<del>Known as Sticky Forest, 50.7 hectares of land granted by agreement between the Crown and Te Rūnanga o Ngāi Tahu (Te Rūnanga) to be made available for the successors or current living relatives of the original grantees of land at Manuhaea or “The Neck”, which was allocated under the South Island Landless Natives Act but not transferred before SILNA was repealed.</del>	<del>South Island Landless Natives Act</del>

<sup>23</sup> 00226.041 Kāi Tahu ki Otago

<sup>24</sup> 00226.041 Kāi Tahu ki Otago

<sup>25</sup> 00226.041 Kāi Tahu ki Otago

<sup>26</sup> 00226.041 Kāi Tahu ki Otago

<sup>27</sup> 00226.329 Kāi Tahu ki Otago

<sup>28</sup> 00226.041 Kāi Tahu ki Otago

<sup>29</sup> 00226.329 Kāi Tahu ki Otago

<sup>30</sup> 00234.005 Te Rūnanga o Ngāi Tahu

	<p><u>Known as Sticky Forest and being 50.7 hectares more or less to be vested in the Successors as defined in and pursuant to Section 15 of the Deed of Settlement 1997 between Te Rūnanga o Ngāi Tahu and the Crown, and as enacted in Part 15 of the Ngāi Tahu Claims Settlement Act 1998.<sup>31</sup></u></p>	
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Confirmation of whether changes are needed to the list of Nohoaka (Para 72, 00234.005 Te Rūnanga o Ngāi Tahu)

24 I understand that no further changes are needed.

How should taoka tuku iho be incorporated into MW-O1? (para 99 and 102, re: 00223.028 Ngāi Tahu ki Murihiku)

25 Discussions with submitters revealed that the term taoka tuku iho in MW-O1 is potentially confusing and unhelpful. The inclusion was intended to clarify MW-AER2. I also recommended the term be included in MW-E1 as a response to submissions (see paragraph 252 of my s42A report). It is not used elsewhere in the pORPS.

26 I now understand that the preference of mana whenua is to remove the term from the pORPS entirely. The inclusions in MW-O1 and MW-E1 may be removed by rejecting the associated submissions (00223.028 Ngāi Tahu ki Murihiku and 00223.036 Ngāi Tahu ki Murihiku respectively).

27 I consider there is scope to remove the reference to taoka tuku iho in MW-AER2 as a consequence of my new recommendations on those submissions, as well as the submission from Jim Hopkins (00420.010 Hopkins, Jim) that the AER be expressed more clearly.

28 I therefore recommend the following changes to the s42A versions of MW-O1, MW-E1 and MW-AER2:

**MW-O1 – Principles of Te Tiriti o Waitangi**

The principles of Te Tiriti o Waitangi are given effect in resource management processes and decisions, utilising a partnership approach between councils and

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<sup>31</sup> 00226.329 Kāi Tahu ki Otago



~~Papatipu Rūnaka papatipu rūnaka~~ to ensure that what is valued by *mana whenua* ~~in relation to their taoka tuku iho~~<sup>32</sup> is actively protected in the region.

### **MW-E1 – Explanation**

The policies in this section are designed to achieve MW-O1 by setting out the actions that must be undertaken by *local authorities* to ensure the principles of Te Tiriti o Waitangi are given effect in resource management processes and decisions, and mana whenua values ~~and taoka tuku iho~~<sup>33</sup> are actively protected, supporting Kāi Tahu wellbeing. The policies also require [...]

**MW-AER2** Strong relationships between Kāi Tahu and *local authorities* facilitate the exercise of *rakatirataka* and *kaitiakitaka* by *mana whenua* ~~in relation to their taoka tuku iho~~.<sup>34</sup>

*Inclusion of the term mana moana in MW-P2 (Para 124b and 131 re: 00226.046 Kāi Tahu ki Otago)*

29 In the s42A version of the pORPS, *mana moana* is used four times:

29.1 It is used twice in the description of Kāi Tahu values MW chapter, a narrative section which does not have regulatory effect. The words are not defined.

29.2 It is also used twice in the Coastal Environment chapter, in CE-O4 and CE-M1A. The meaning of the words is clear from the context in each case.

30 MW-P2 has regulatory effect and does not provide context in the way the provisions in the Coastal Environment chapter do. Considering the distinctions in usage, and prehearing discussion, I recommend not including the term in MW-P2.

*Use of the terms mātauraka Tahu and tikaka Tahu (Para 128 and 131, 00234.008 Te Rūnanga o Ngāi Tahu)*

31 After prehearing discussion with submitters, I now confirm the position I took in my s42A report: that the terms *mātauraka Tahu* and *tikaka Tahu* may be confusing if included in MW-P2 because they are not used in this way elsewhere

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<sup>32</sup> 00420.010 Hopkins, Jim

<sup>33</sup> 00420.010 Hopkins, Jim

<sup>34</sup> 00420.010 Hopkins, Jim

in the document, which may lead to differences in interpretation of this policy, or a lack of clarity. However, I now recommend accepting the submission in part and adding a new clause 8B:

[...]

(8) taking into account iwi management plans when making resource management decisions-, and<sup>35</sup>

(8A) regional plans and district plans recognising and providing for aquaculture settlement outcomes identified under the Māori Commercial Aquaculture Claims Settlement Act 2004.<sup>36</sup> and

(8B) recognising and providing for mātauraka and tikaka in environmental and resource management.<sup>37</sup>

Use of hauora in policy context – does it need definition, or explanation in the MW chapter? (Para 139 and 140, 00226.047 Kāi Tahu ki Otago<sup>38</sup>)

32 Following prehearing discussions with parties representing mana whenua interests, I now understand that further explanation of the term hauora would be valuable to ensure it is properly understood in the context of the pORPS. In accordance with those prehearing discussions, I recommend adding a section on hauora to the Kāi Tahu Values section, after the paragraphs headed Kaitiakitaka, as follows:

### Hauora

Hauora is a holistic understanding of health and wellbeing. For Kāi Tahu, te hauora o te taiao (the health of the environment), te hauora o te wai (the health of the waterbody) and te hauora o te tangata (the health of the people) are all interconnected. Due to this connection, the state of health and wellbeing of wai māori and te taiao is seen as a reflection on the mana, health, and wellbeing of Kāi Tahu as mana whenua. Decline in te hauora o te wai and te hauora o te taiao is also understood by Kāi Tahu to adversely impact the health and well-being of the Otago community as a whole, tangata katoa.<sup>39</sup>

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<sup>35</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00234.008 Te Rūnanga o Ngāi Tahu

<sup>36</sup> 00234.008 Te Rūnanga o Ngāi Tahu

<sup>37</sup> 00234.008 Te Rūnanga o Ngāi Tahu

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<sup>39</sup> 00226.047 Kāi Tahu ki Otago

## A new definition of Māori land

33 In my section 42A report, I raised two further points for clarification that have required more substantial amendments. In summary:

33.1 Do we need Clearer wording for land to fall under MW-P4 and MW-M5? (Para 163 and 222, 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, see also para 224 re: 00010.006 Cain whānau)

33.2 What, if anything, should be said about ancillary claims? (Para 73 and 222, 00010.002 Cain whanau, 00010.006 Cain whanau, see also para 224)

34 Following pre-hearing discussions, I have reconsidered whether to include a new defined term “Māori Land”, which incorporates ancillary claims. It would replace the term Te Ture Whenua Māori land. The following types of land were considered for inclusion:

34.1 Land owned by Te Rūnanga o Ngāi Tahu or its constituent papatipu rūnaka;

34.2 Māori communal land gazetted as Māori reservation under s338 Te Ture Whenua Māori Act 1993;

34.3 Māori customary land and Māori freehold land as defined in s4 and s129 Te Ture Whenua Māori Act 1993;

34.4 Former Māori land or general land owned by Māori (as those terms are defined in Te Ture Whenua Māori Act 1993) that has at any time been acquired by the Crown or any local or public body for a public work or other public purpose, and has been subsequently returned to its former Kāi Tahu owners or their successors and remains in their ownership;

34.5 General land owned by Māori (as defined in Te Ture Whenua Māori Act 1993) that was previously Māori freehold land, has ceased to have that status under an order of the Māori Land Court made on or after 1 July 1993 or under Part 1 of the Māori Affairs Amendment Act 1967 on or after 1 April 1968, that is in the ownership of Kāi Tahu whānui;

34.6 Land vested in a Trust or Māori incorporation under Te Ture Whenua Māori Act 1993;

34.7 Held or claimed by Te Rūnanga o Ngāi Tahu and/or related entities including by a person or persons with a whakapapa connection to Kāi Tahu, where the land was transferred or vested, is an entitlement, or is part of an ancillary claim as part of:

34.7.1 redress for the settlement of Treaty of Waitangi claims; or

34.7.2 by the exercise of rights under a Treaty settlement Act or Treaty settlement deed (as those terms are defined under the Urban Development Act 2020);

34.8 Land owned or leased by a person or persons with evidence of Kāi Tahu whakapapa connection to the land (where documentary evidence of whakapapa connection is provided from either the Māori Land Court or the Te Rūnanga o Ngāi Tahu Whakapapa Unit).

35 This new definition is particularly pertinent to the operation of policy MW-P4, which addresses sustainable use of such land, and is addressed below.

36 The proposed scope of the term Māori Land is wider than that of Te Ture Whenua Māori land. I consider this better realises the original reasoning behind developing these provisions of the pORPS; that is, to recognise the lands that have been historically provided to Kāi Tahu for the purpose of development, including land given in recognition of the Crown's past breaches of the principles of Te Tiriti o Waitangi. The newly proposed definition of Māori Land better encompasses land of this type.

37 However, I am not convinced about the inclusion of points 33.1 and 33.8.

38 The wording under 33.1 seems to incorporate general land that Te Rūnanga o Ngāi Tahu or constituent rūnaka might purchase. This is very broad, especially in conjunction with the broadened definition of papakāika that is proposed above. If not included in the definition, any general land purchased may still be able to be developed in accordance with whatever rules for land development are applicable but would not be considered māori land for the purposes of the definition and provisions that use the term.

39 The wording under 33.8 is more curtailed, but the addition of "leased" seems at first glance to open the definition to land that is in private non-Māori ownership, which raises questions about what should happen if the lease ends.

40 I support further discussion of these two points at the hearing, though I do not recommend including them at this point.

41 In consequence, I recommend deleting the term Te Ture Whenua Māori Land and associated definition from the definitions section and elsewhere in the pORPS, and replacing it with the term Māori Land, with the following definition to be added to the definitions section:

<b><u>Māori Land</u></b> <sup>40</sup>	<p>For the purposes of the Otago RPS, means land within the region that is:</p> <ol style="list-style-type: none"><li>1. <u>Māori communal land gazetted as Māori reservation under s338 Te Ture Whenua Māori Act 1993;</u></li><li>2. <u>Māori customary land and Māori freehold land as defined in s4 and s129 Te Ture Whenua Māori Act 1993;</u></li><li>3. <u>Former Māori land or general land owned by Māori (as those terms are defined in Te Ture Whenua Māori Act 1993) that has at any time been acquired by the Crown or any local or public body for a public work or other public purpose, and has been subsequently returned to its former Kāi Tahu owners or their successors and remains in their ownership;</u></li><li>4. <u>General land owned by Māori (as defined in Te Ture Whenua Māori Act 1993) that was previously Māori freehold land, has ceased to have that status under an order of the Māori Land Court made on or after 1 July 1993 or under Part 1 of the Māori Affairs Amendment Act 1967 on or after 1 April 1968, that is in the ownership of Kāi Tahu whānui;</u></li><li>5. <u>Vested in a Trust or Māori incorporation under Te Ture Whenua Māori Act 1993;</u></li><li>6. <u>Held or claimed by Te Rūnanga o Ngāi Tahu and/or related entities including by a person or persons with a whakapapa connection to Kāi Tahu, where the land was transferred or vested, is an entitlement, or is part of an ancillary claim:</u><ol style="list-style-type: none"><li>(a) <u>as part of redress for the settlement of Treaty of Waitangi claims; or</u></li><li>(b) <u>by the exercise of rights under a Treaty settlement Act or Treaty settlement deed (as those terms are defined under the Urban Development Act 2020);</u></li></ol></li><li>7. <u>Owned by a person or persons with evidence of Kāi Tahu whakapapa connection to the land (where documentary evidence of whakapapa connection is provided from either the Māori Land Court or the Te Rūnanga o Ngāi Tahu Whakapapa Unit).</u></li></ol>
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42 Introducing this term will require several other parts and provisions of the pORPS to be amended for consistency:

42.1 Introduction (section on Partnership, Te Tiriti o Waitangi and Kāi Tahu)

42.2 Definitions (described above)

42.3 The MW chapter narrative sections (section on Māori Land Reserves)

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<sup>40</sup> 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau

42.4 The MW chapter (MW-P4 and MW-M5 – these changes are discussed more fully below)

42.5 The UFD chapter (UFD-P7, UFD-P9 and UFD-AER15)

42.6 The ECO chapter (ECO-P4)

43 The changes are as follows:

44 In Part 1 – Introduction and General Provisions, under Partnership, Te Tiriti o Waitangi and Kāi Tahu, adding Māori land to Native reserves as part of the issue concerning land development:

...

The key issues identified by Kāi Tahu include:

...

- enabling development of *land* and resources within native reserves and Māori land,<sup>41</sup> including *papakāika* housing; and

...

45 In the Mana Whenua chapter, changing the following section title and underlying section to remove the new defined term, as the section focuses on native reserves:

~~Māori Land Native~~<sup>42</sup> Reserves

...

A number of ~~Māori native~~<sup>43</sup> reserves exist that were excluded from the land sales of the 1840s.[...] Other categories of ~~Māori~~<sup>44</sup> land exist at Kōputai Kōpūtai, ...

46 In UFD-P7 (5A), replacing the deleted term with the new defined term:

(5A) provides for the use by Kai Tahu of Native Reserves and ~~Te Ture Whenua Maori land~~ Māori Land,<sup>45</sup> for *papakāika*, *kāika*, *nohoaka*.

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<sup>41</sup> 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau

<sup>42</sup> 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau

<sup>43</sup> 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau

<sup>44</sup> 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau

<sup>45</sup> 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau

marae and marae related activities, and otherwise provides for Kāi Tahu use of rural areas and the resources and values they contain.

47 In UFD-P9 replacing the deleted term with the new defined term:

Facilitate the development, by mana whenua, of Native Reserves and ~~Te Ture Whenua Maori Māori~~<sup>46</sup> land, for *papakāika*, *kāika*, *nohoaka*, and *marae*, and marae related activities where existing or planned *development infrastructure* of sufficient capacity is or can be provided (including allowance for self-servicing systems).

48 In UFD-AER15 replacing the deleted term with the new defined term:

The development of Native reserves and ~~Te Ture Whenua Maori land Māori Land~~<sup>47</sup> occurs in accordance with the needs, aspirations and cultural values of mana whenua.

49 In ECO-P4(2) and (3), inserting the term “Native reserves”, because the original use of “Māori land” in this policy is in the context of Te Ture Whenua Māori Act 1993. This is consistent with changes to section titles in the Mana Whenua chapter (see paragraph 45 above) and the way these terms are recommended to be used elsewhere (see paragraphs 44 and 46 – 48 above):

(2) the development of *papakāika*, marae and ancillary facilities associated with customary activities on Native reserves and Māori land Māori land,<sup>48</sup>

(2A) ...

(3) “the use of Māori land Native reserves and Māori land<sup>49</sup> in a way that ~~will make a significant contribution~~<sup>50</sup> to enable mana whenua to maintain their connection to their whenua and enhancing the<sup>51</sup> social, cultural or economic well-being, ~~of takata whenua,~~”

50 The footnote to ECO-P4(2) is also deleted:

~~† ‘Māori land’ applies to land in native reserves that are held under Te Ture Whenua Māori act 1993~~<sup>52</sup>

<sup>46</sup> 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau

<sup>47</sup> 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau

<sup>48</sup> 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau

<sup>49</sup> 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau

<sup>50</sup> 00234.032 Te Rūnanga o Ngāi Tahu

<sup>51</sup> 00234.032 Te Rūnanga o Ngāi Tahu

<sup>52</sup> 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau

*s32AA evaluation of effect of new term and definition “Māori land”*

- 51 The introduction and MW chapter narrative sections do not have regulatory effect; I consider no evaluation is required of these uses of the definition.
- 52 The effect of the new definition in MW-P4 and MW-M5 is evaluated at the end of the section addressing those provisions, below.
- 53 This leaves the changes to the following provisions:
- 53.1 UFD-P7(5A)
  - 53.2 UFD-P9
  - 53.3 UFD-AER15
  - 53.4 ECO-P4(2) and (3)
- 54 While the new definition expands the range of land these provisions apply to, I do not consider it makes a significant difference to the substance and effect of these policies. The extent of Māori Land under the new definition in the pORPS is not clear, given factors such as the limited inclusion of general land owned by māori, and land owned by people who can show evidence of a Kāi Tahu whakapapa connection to it. However, prehearing discussions indicate it relates to a very small proportion of land in Otago.
- 55 Accordingly, I consider these changes will create minimal overall cost in environmental, social, cultural, or economic terms when compared to the existing version of the provisions. Conversely, there is increased cultural, social, and economic benefit in allowing such land to be developed to enhance mana whenua cultural aspirations.
- 56 In terms of the UFD chapter provisions, increasing the land available for development in accordance with Kāi Tahu aspirations increases efficiency and effectiveness of achieving UFD-O2(11) by providing for development opportunities which support the aspirations and values of mana whenua, and also UFD-04(4A) by providing for the use and development of land in rural areas by Kāi Tahu for papakāika, kāika, nohoaka, marae, and marae related activities.
- 57 In terms of the ECO chapter, this change increases effectiveness and efficiency of achieving ECO-O3 Kaitiakitaka and stewardship, particularly as it relates to te



hauora o te takata (the health of the people), noting that hauora is a holistic concept of wellbeing.

#### MW-P4 – Sustainable use of Māori land

- 58 Kāi Tahu ki Otago (00226.047, 00226.048), Te Rūnanga o Ngāi Tahu (00234.009) and Cain Whānau (00010.004) made submissions on MW-P4 seeking to ensure Kāi Tahu can protect, occupy, subdivide, develop, and use their resources to their benefit. The submitters also note their concern that the three subclauses unfairly limit this provision, in a way that other development provisions are not limited, and seem to place a hierarchy on section 6 matters.
- 59 In my section 42A report, I recommended some relatively minor changes, but did not recommend removing the three subclauses. However, prehearing discussions have changed my point of view. I now have a better understanding of the restrictions Kāi Tahu face in developing the lands that are the subject of this provision. These lands were retained or provided with the intent that Kāi Tahu could develop them in accordance with their needs, but such use is often curtailed in practice by access issues or by large areas of the land being identified as a significant area (for example, as a significant natural area or significant habitat) with accompanying restrictions on development. While significant resources do need protection, it is inequitable that land given for development is unable to be developed.
- 60 I now agree that the three sub-clauses should be deleted. Health and safety, the subject of subclause 1, is covered where necessary with respect to access and hazards,<sup>53</sup> and through other provisions such as those dealing with wastewater and drinking water.<sup>54</sup> The subject of subclause (2), matters of national importance, is dealt with in the relevant chapters of the pORPS.<sup>55</sup> The third subclause is not meaningful in the absence of the other two.
- 61 I note that this provision includes a key use of the proposed new definition of Māori Land. The range of land MW-P4 applies to is therefore broader than in the notified version. The recommended amendments to the definition of papakāika also make the range of activities that can be carried out broader. However, I consider this is appropriate, given both the nature of the land under consideration,

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<sup>53</sup> For example: CE-O5, CE-P8, LF-LS-P22, EIT-INF-O4, HAZ-CL-P18.

<sup>54</sup> For example: CE-M3, LF-VM-O2, LF-VM-O4, LF-FW-P15A, UFD-P8, LF-WAI-P1, LF-FW-P7, LF-FW-M6,

<sup>55</sup> For example: CE-P4, CE-P5, LF-FW-P11, LF-FW-P12, ECO-P3, EIT-INF-P13, NFL-P2

as discussed above, and the parameters set for those activities by the words “in accordance with mātauraka and tikaka”.

62 Some other minor changes were discussed during prehearing discussions. As a result, I recommend removing the word “protect”, as this is not pertinent to the intent of the policy.

63 In response to concerns about clarity of how MW-P4 should be implemented and its relationship to other parts of the pORPS, I propose consequential changes to MW-M5 to assist with implementation and interaction with other provisions. The changes made are intended to require Regional and District plans to enable a pathway for Kāi Tahu to develop their lands when there is a conflict with other matters of national importance.

64 Accordingly, I recommend the following changes:

#### **MW-P4 – Sustainable use of ~~Māori land~~ Native Reserves and Māori land<sup>56</sup>**

Kāi Tahu are able to ~~protect,~~<sup>57</sup> develop and use *land* and resources within native reserves and ~~land held under Te Ture Whenua Māori Act 1993~~ Māori land<sup>58</sup> in accordance with mātauraka and tikaka, ~~a way consistent with their culture and traditions and to provide for their~~ economic, cultural and social aspirations, including for *papakāika*, marae and marae related activities, ~~while:~~

~~(1) avoiding adverse effects on the health and safety of people,~~

~~(2) avoiding significant adverse effects on matters of national importance, and~~

~~(3) avoiding, remedying, or mitigating other adverse effects.~~<sup>59</sup>

#### **MW-M5 – Regional plans and district plans**

*Local authorities* must amend their *regional plans*<sup>60</sup> and *district plans* to:

(1) take into account ~~Iwi Management Plans~~ iwi management plans and address resource management issues of significance to Kāi Tahu ~~(RMA)~~ into account,<sup>61</sup>

<sup>56</sup> 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau

<sup>57</sup> 00226.047 Kāi Tahu ki Otago, 00226.048 Kāi Tahu ki Otago, 00234.009 Te Rūnanga o Ngāi Tahu, 00010.004 Cain Whānau

<sup>58</sup> 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau

<sup>59</sup> 00226.047 Kāi Tahu ki Otago, 00226.048 Kāi Tahu ki Otago, 00234.009 Te Rūnanga o Ngāi Tahu, 00010.004 Cain Whānau

<sup>60</sup> Clause 16(2), Schedule 1, RMA

<sup>61</sup> 00223.035 Ngāi Tahu ki Murihiku

- (2) provide for the use of native reserves and Māori<sup>62</sup> land in accordance with MW-P4,<sup>63</sup> and, if such use may have adverse effects on a matter of national importance, enable development of alternative approaches, led by Kāi Tahu, to preserving the values protected by this Regional Policy Statement,<sup>64</sup>
- (3) incorporate active protection of areas and resources recognised in the NTCSA-1998<sup>65</sup>, and<sup>66</sup>
- (3A) provide for the outcomes of settlements under the Māori Commercial Claims Aquaculture Settlement Act 2004.<sup>67</sup>

### *Section 32AA evaluation*

- 65 Removing subclauses 1 to 3 from MW-P4, in conjunction with the recommended definition of māori land broadens the range of land and activities that fall under this provision, giving better effect to RMA s6(e), which requires decisionmakers to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga.
- 66 In addition, the consequential amendment to MW-M5 better balances the relationship with other matters of national importance, while still preserving their values.
- 67 This approach is more effective and efficient in achieving objective MW-O1, by virtue of giving better effect to the principles of Te Tiriti o Waitangi, in particular partnership and protection.
- 68 These amendments provide a better realisation of the intent of the notified pORPS, providing better economic opportunities, and enhancing social and cultural wellbeing for Kāi Tahu. There may be some environmental cost if there are impacts on matters of national importance. However, I believe these are appropriate in the circumstances and likely to be minimal, given the Te Ao Kāi Tahu approach to environmental matters.

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<sup>62</sup> 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau

<sup>63</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00234.010 Te Rūnanga o Ngāi Tahu

<sup>64</sup> 00226.047 Kāi Tahu ki Otago, 00226.048 Kāi Tahu ki Otago, 00234.009 Te Rūnanga o Ngāi Tahu, 00010.004 Cain Whānau

<sup>65</sup> Clause 16(2), Schedule 1, RMA

<sup>66</sup> Clause 10(2)(b)(i), Schedule 1, RMA – Consequential amendment arising from 00234.010 Te Rūnanga o Ngāi Tahu

<sup>67</sup> 00234.010 Te Rūnanga o Ngāi Tahu

69 Overall, I consider my updated recommendations are more appropriate for achieving the purpose of the RMA than my original section 42A recommendations.

#### MW-M1 - Collaboration with Kāi Tahu

70 Prehearing discussions indicated that the s42A version of the pORPS did not fully address mana whenua's concerns about mapping as a management technique, (00223.031 Ngāi Tahu ki Murihiku, 00010.005 Cain whānau) and the need to be clearer about using culturally appropriate management methods. The pORPS needs to be clear that mapping is not a required method for identification, as it may not be culturally appropriate or practical in all cases.

71 Accordingly, I recommend the following:

#### **MW-M1 – Collaboration with Kāi Tahu**

*Local authorities* must collaborate with Kāi Tahu to:

- (1) ~~identify, and map~~ record (including by mapping),<sup>68</sup> and protect<sup>69</sup> manage, in accordance with tikaka, kawa, and mātauraka, those<sup>70</sup> places, areas, or landscapes, waters, taoka and other elements of cultural, spiritual or traditional significance to them mana whenua<sup>71</sup> by:

  - (a) identifying, recording, and assessing these elements using methods determined by mana whenua (which may include mapping), and
  - (b) protecting the values of, and mana whenua relationships to, these elements.<sup>72</sup>

- ~~(2) protect such places, areas, or landscapes, and the values that contribute to their significance,~~
- (3) identify indigenous species and ecosystems that are taoka in accordance with ECO-M3, and<sup>73</sup>

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<sup>68</sup> 00223.031 Ngāi Tahu ki Murihiku

<sup>69</sup> 00226.049 Kāi Tahu ki Otago

<sup>70</sup> 00223.031 Ngāi Tahu ki Murihiku, 00010.005 Cain whanau

<sup>71</sup> 00226.049 Kāi Tahu ki Otago

<sup>72</sup> 00223.031 Ngāi Tahu ki Murihiku, 00010.005 Cain whanau

<sup>73</sup> Clause 10(2)(b)( ), Schedule 1, RMA – consequential amendment arising from 00226.049 Kāi Tahu ki Otago

~~(4) identify and map outstanding natural features, landscapes and seascapes, and highly valued natural features, landscapes and seascapes and record their values.~~

~~(4A) determine appropriate naming for places of significance in Otago, and~~

~~(4B) share information relevant to Kai Tahu interests.~~<sup>74</sup>

*Section 32AA evaluation*

- 72 The changes to MW-M1 enhance the role of Kāi Tahu and their mātauraka, tikaka and kawa in determining culturally appropriate methods for identifying significant areas.
- 73 This is a more effective and efficient way of implementing the policies and giving effect to MW-O1, as it better exemplifies the principles of Te Tiriti o Waitangi, particularly the partnership approach and protection of Kāi Tahu values, by ensuring that management approaches are consistent with those values.

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James Henry Adams

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11 October 2022

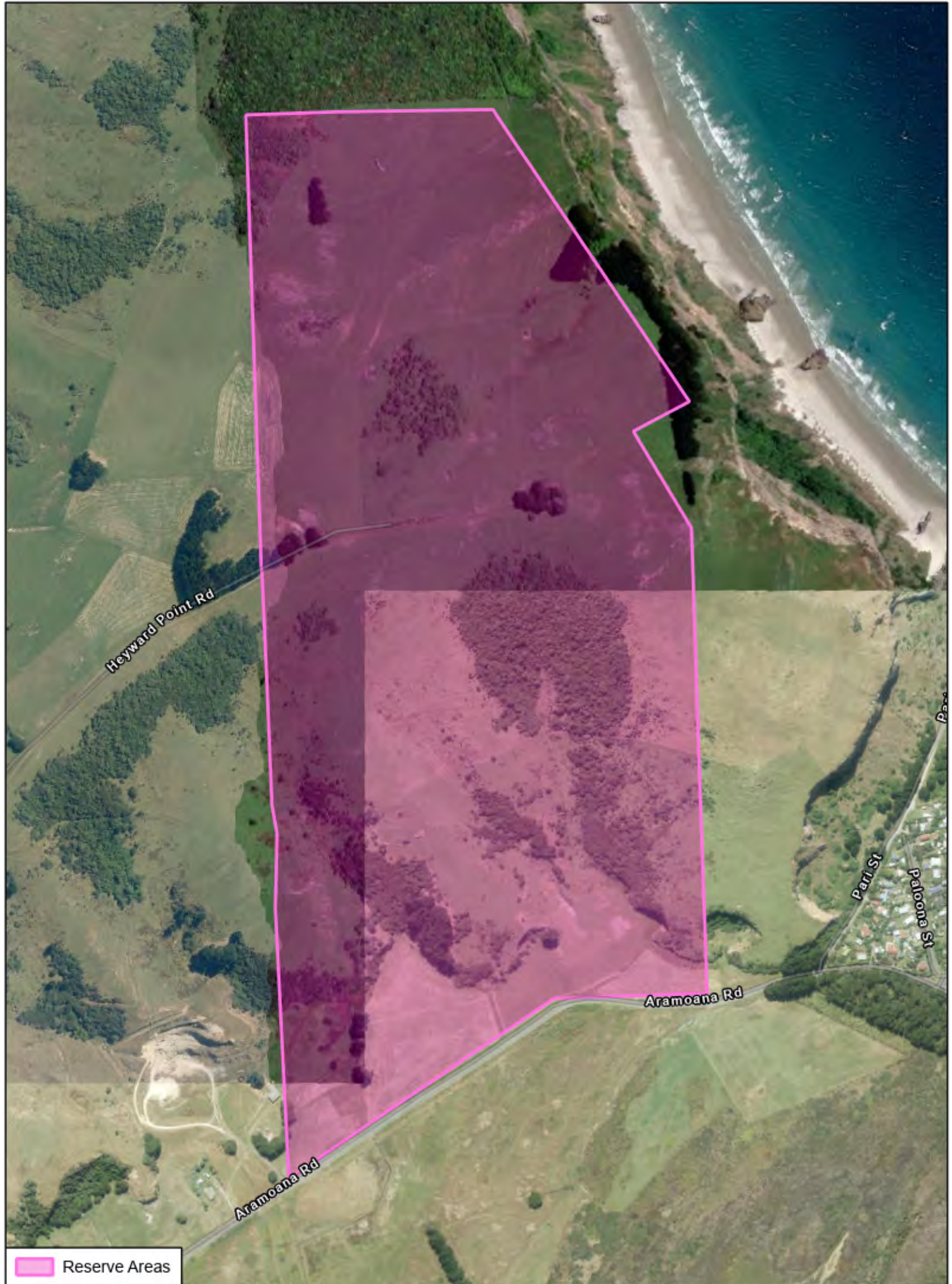
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<sup>74</sup> 00226.049 Kāi Tahu ki Otago

## Appendix 1: Table of Errata

s42A report paragraph	Description of Issue	Correction
130	Refers to wrong provision	I recommend amending <del>MW-P1</del> <u>MW-P2</u> as follows:
130	The recommended revisions of MW-P2 are duplicated.	Delete one instance of the revisions.

## Appendix 2 – Maps of Native Reserves



Heyward Point Rd

Aramoana Rd

Aramoana Rd

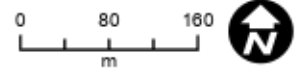
Pari St

Palooa St

Reserve Areas




Aramoana



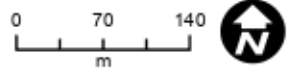




 Reserve Areas



Brinns Point





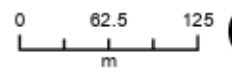
Finlayson Rd

Finlayson Rd


Reserve Areas



Clarendon

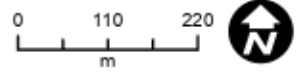


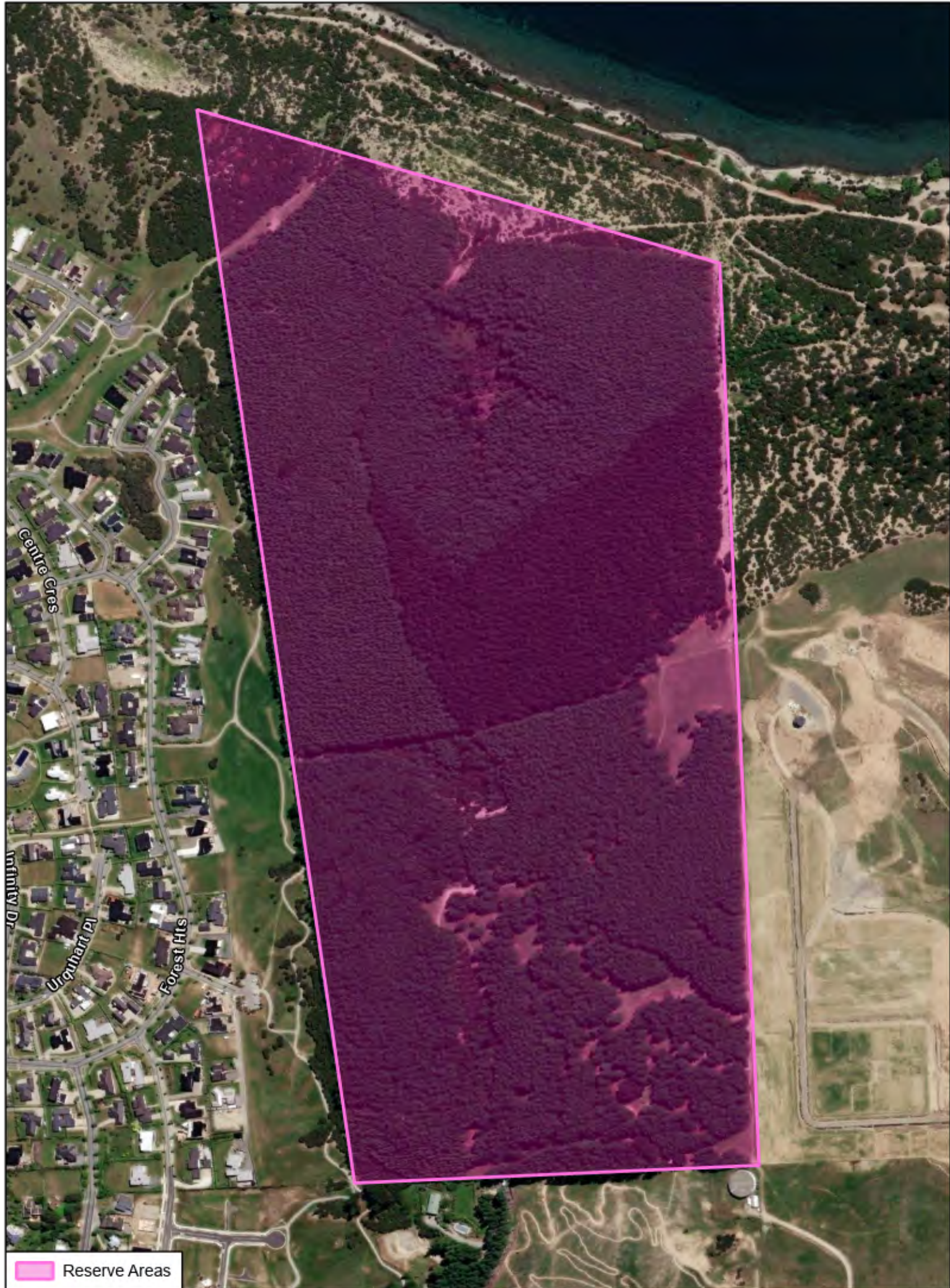


 Reserve Areas



Glenmaru

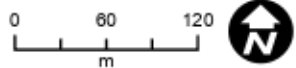


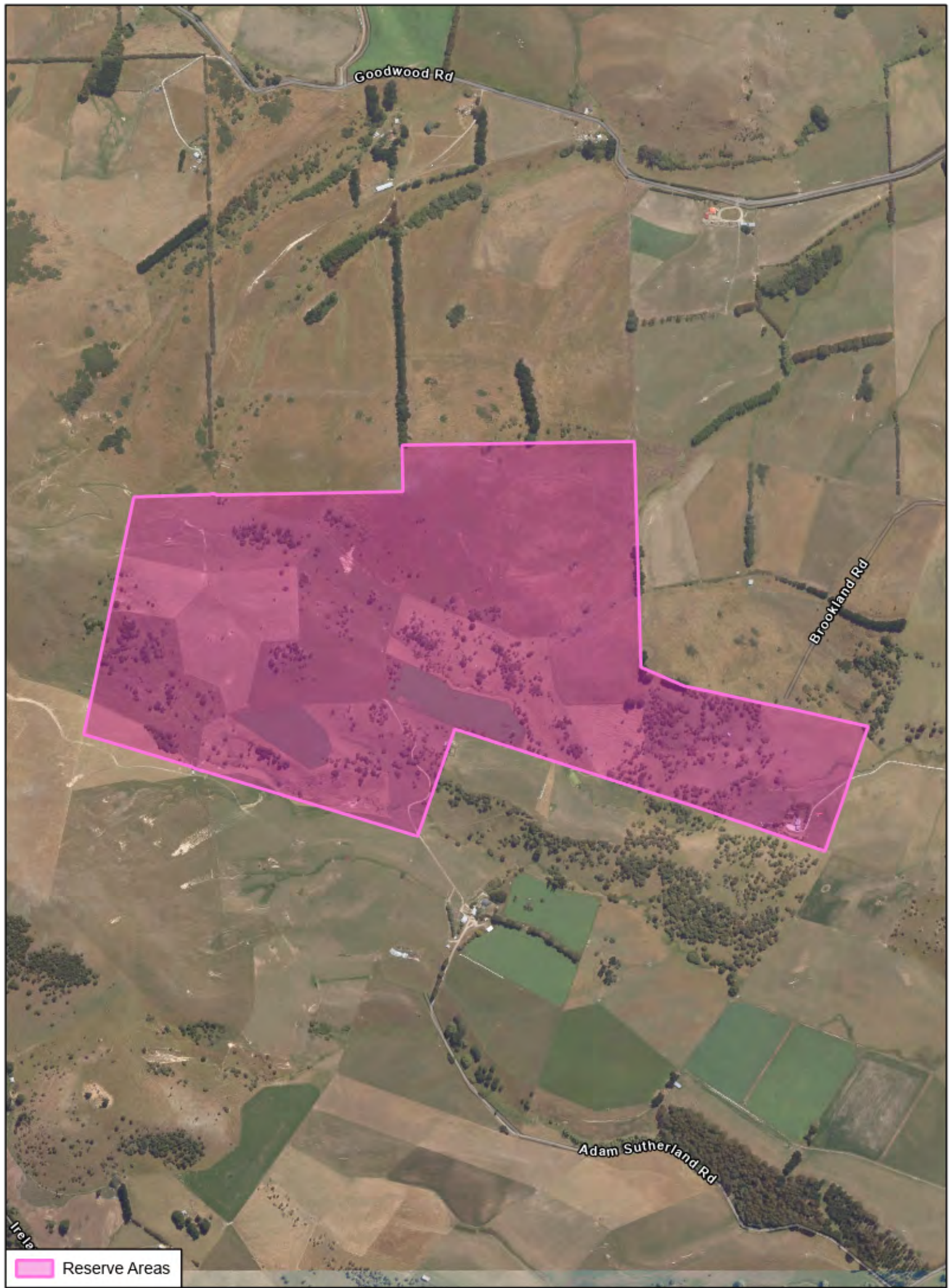


Reserve Areas



Hāwea-Wānaka Block (Wānaka Plantation)





Goodwood Rd

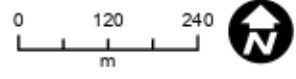
Brookland Rd

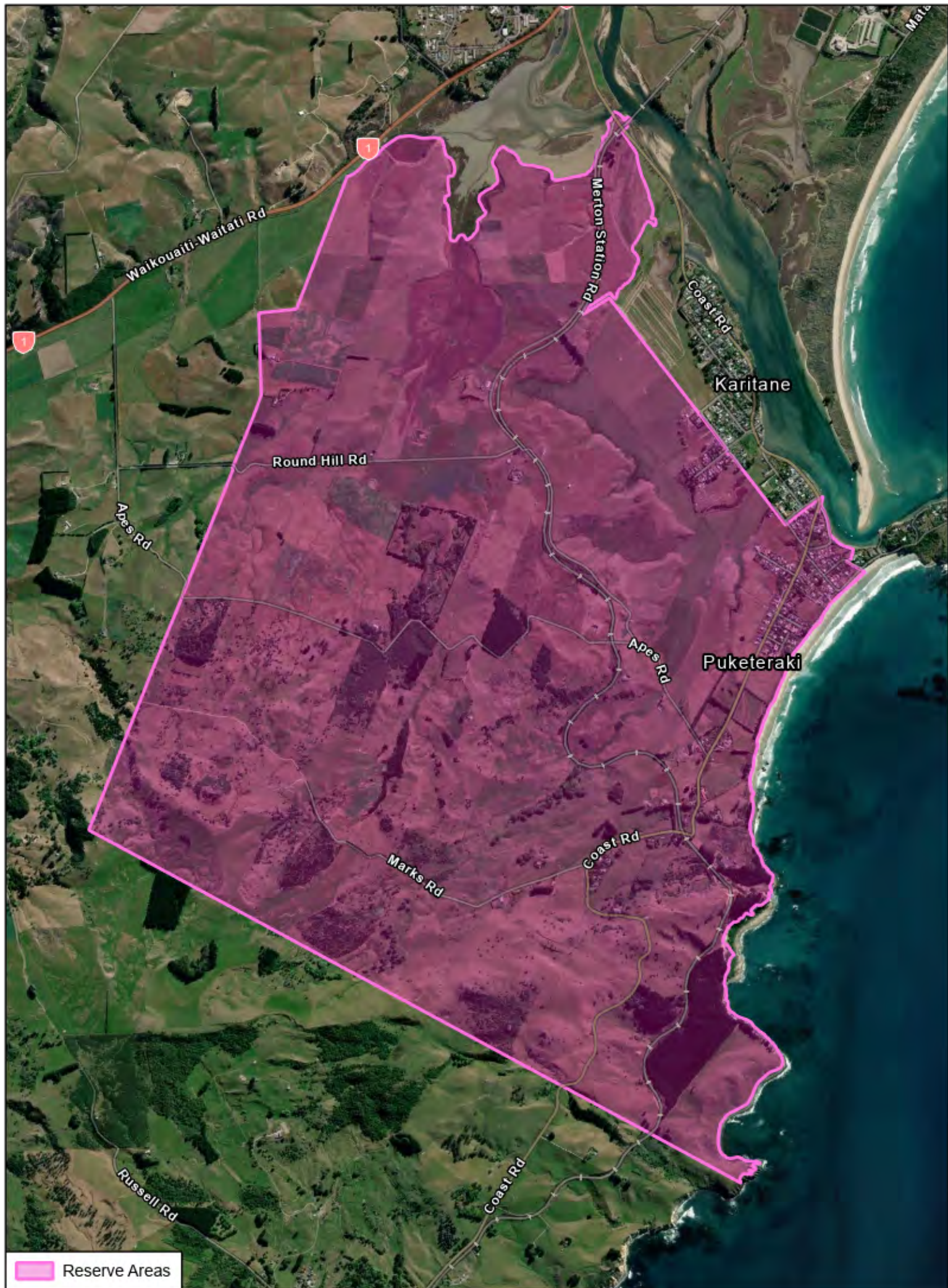
Adam Sutherland Rd

Reserve Areas



Hawksbury

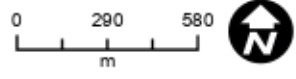




Reserve Areas



### Karitane (Waikōuaiti Native Reserve)



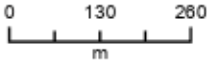


Kaik Rd


Reserve Areas



Korotuaheka

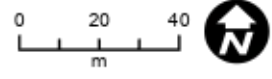




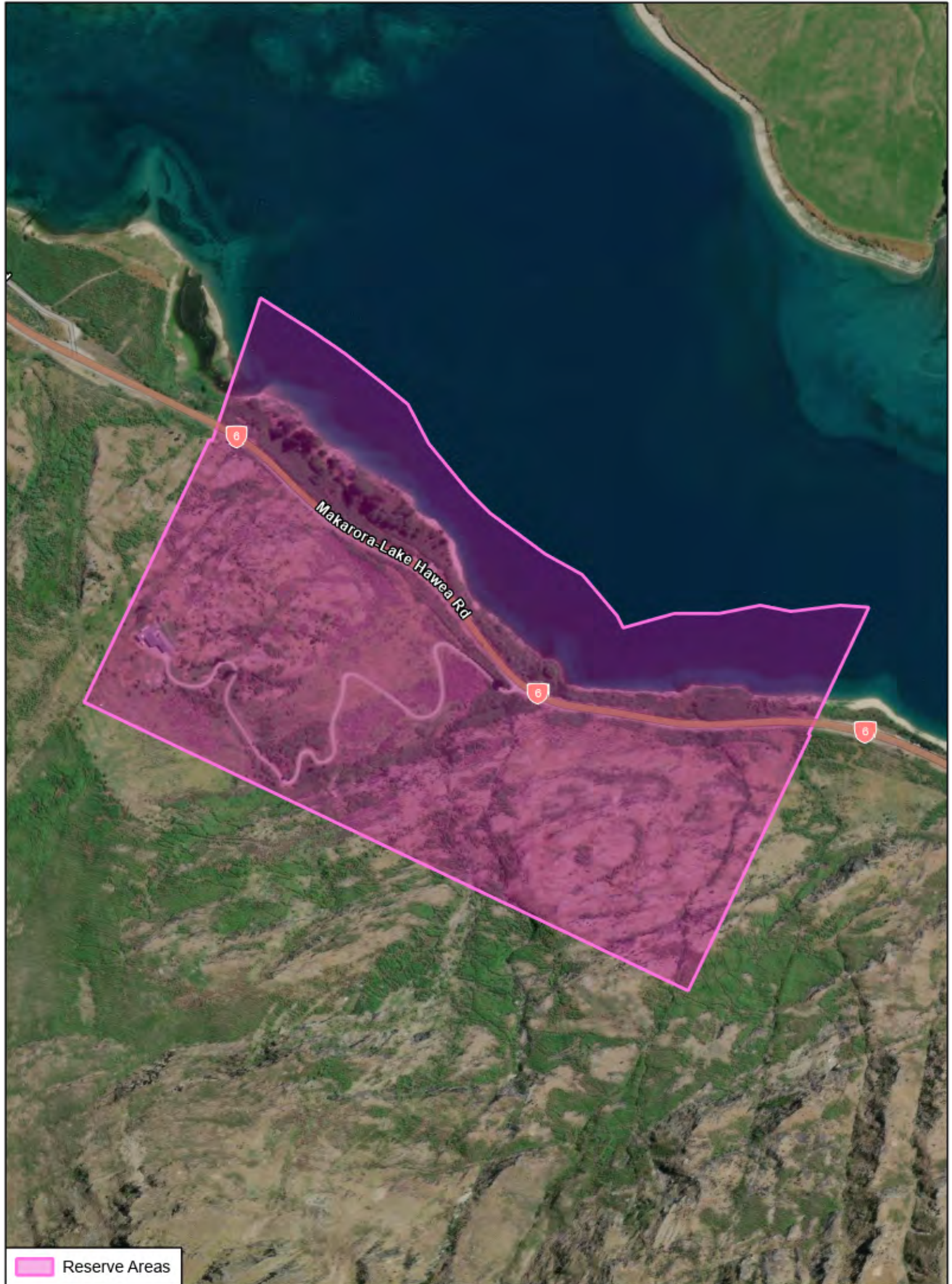
 Reserve Areas




Kuri Bush



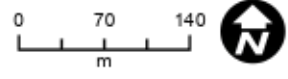





 Reserve Areas



Lake Hāwea

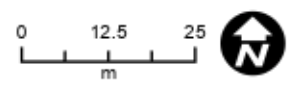




 Reserve Areas



Lake Tatawai



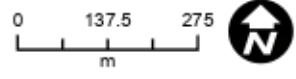


Rata St  
Totara St  
Tarata St  
Kaka Point


Reserve Areas



Maranuku

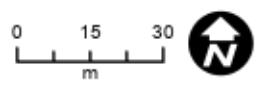


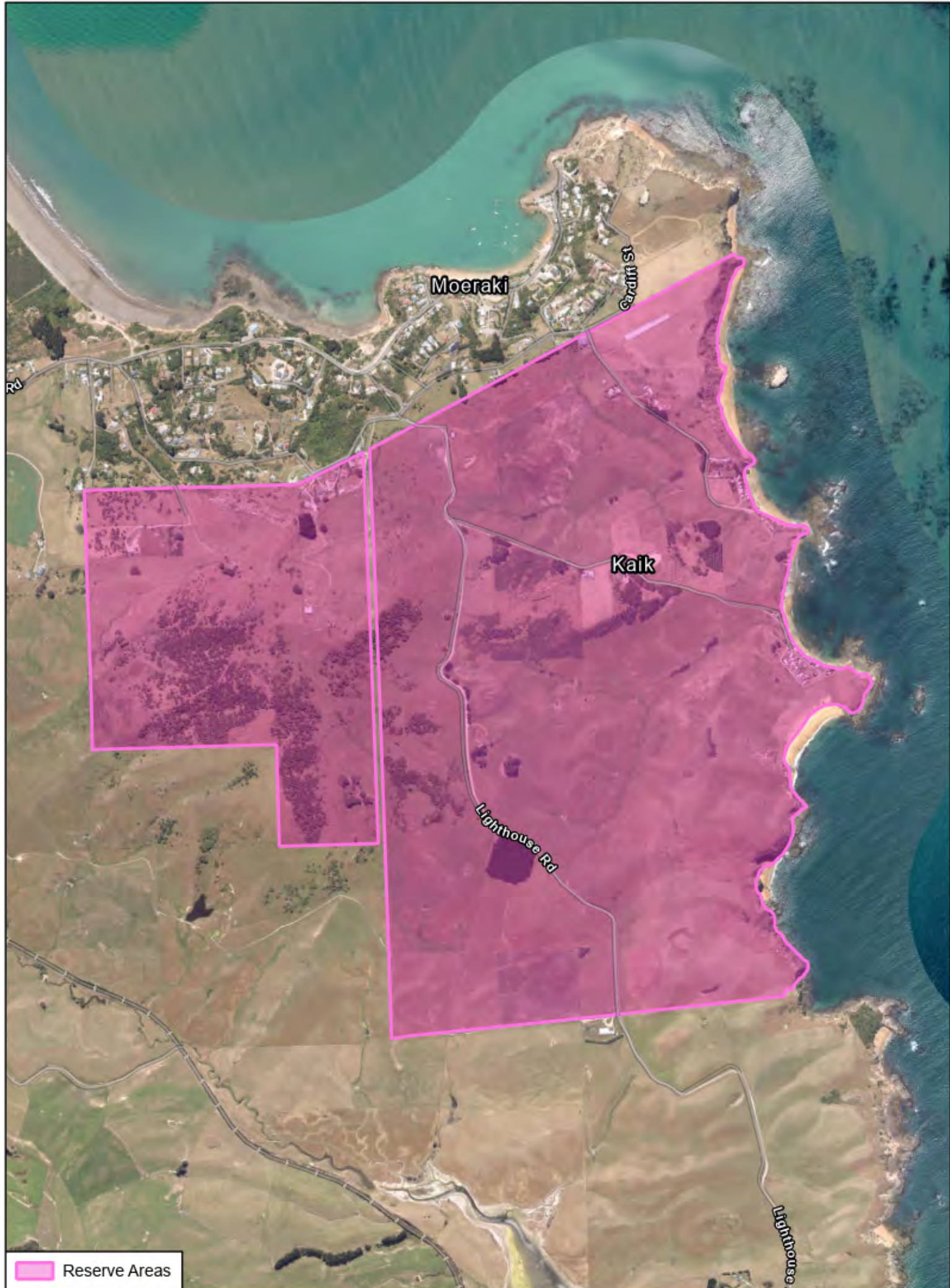


 Reserve Areas



Matainaka and Hawksbury Fishing Easement

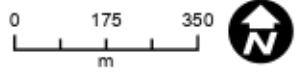


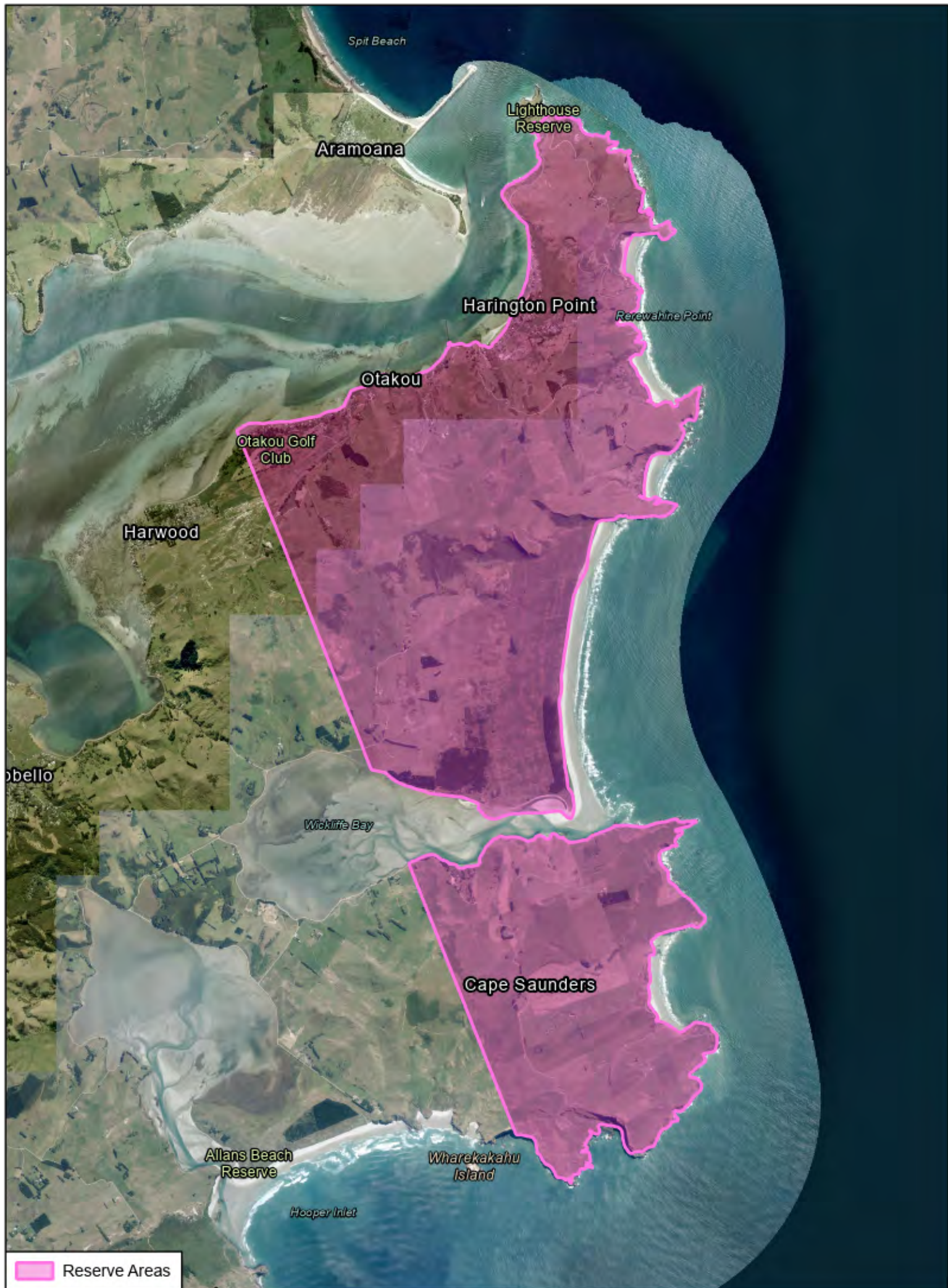


Reserve Areas



Moeraki

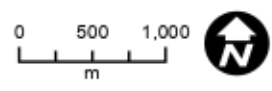




Reserve Areas



### Otago Heads Native Reserve



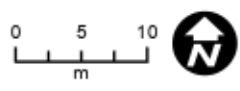


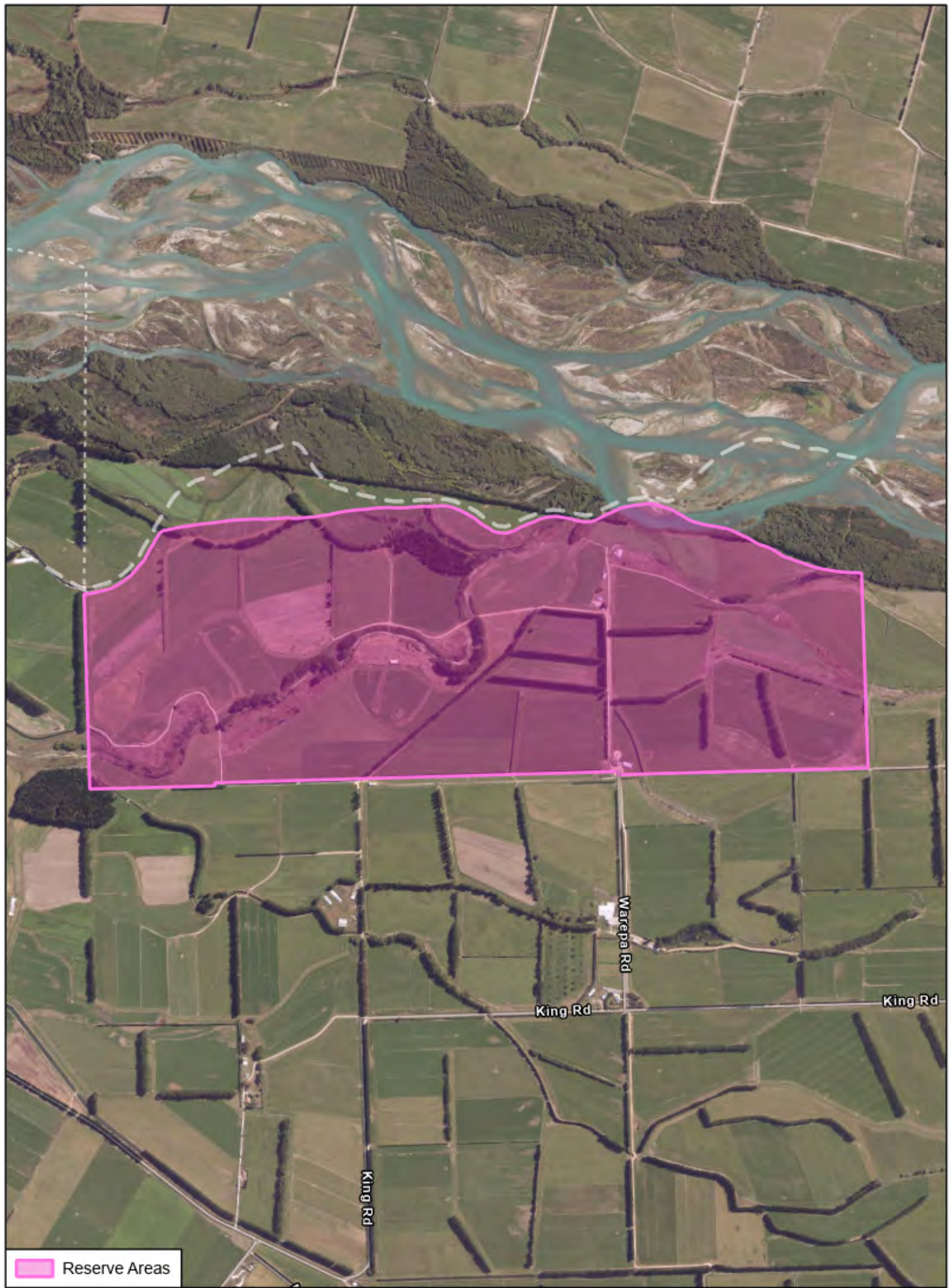
Macandrew Drive


Reserve Areas



Port Chalmers

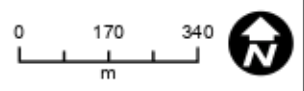




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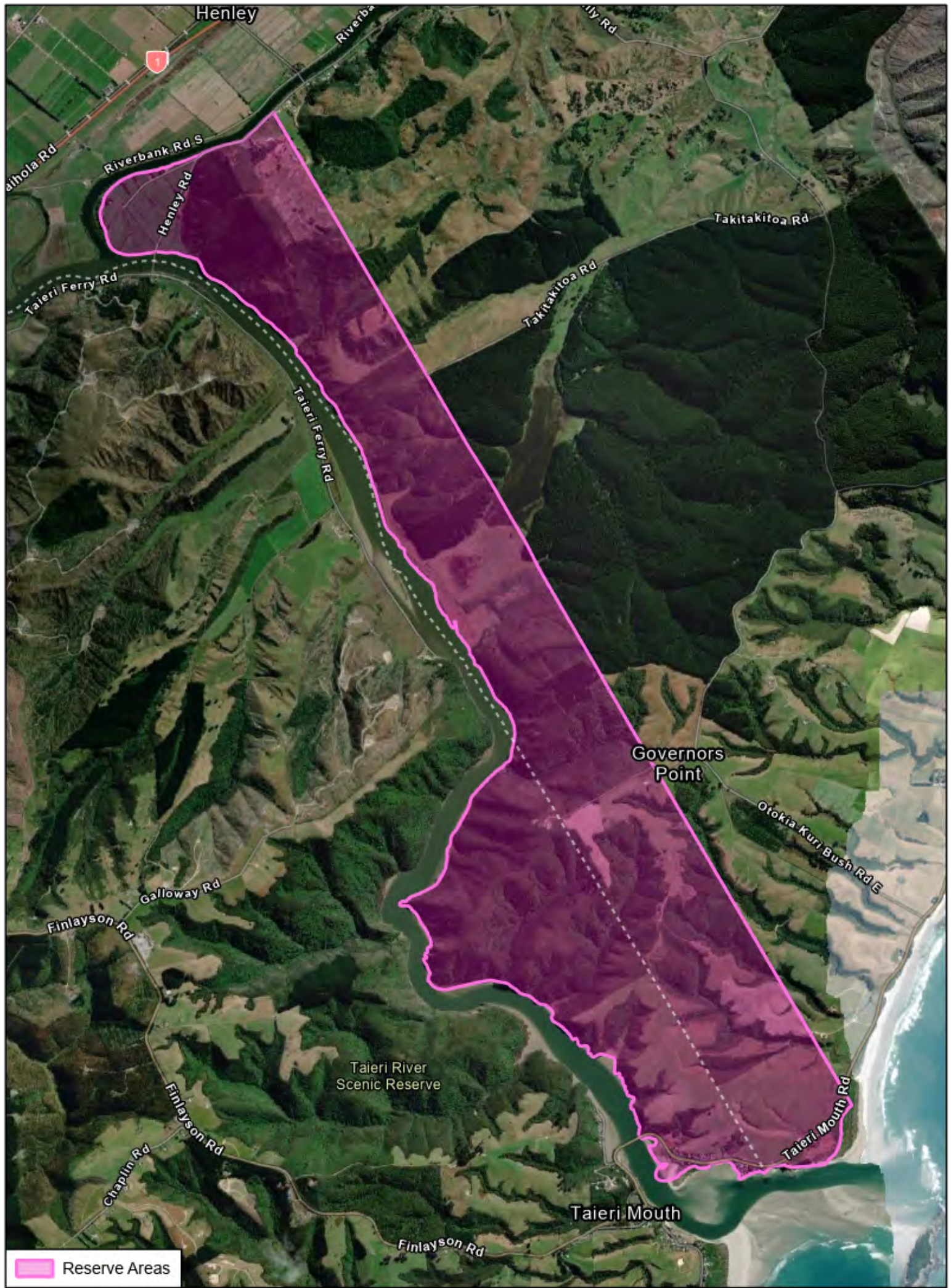


Punaomaru





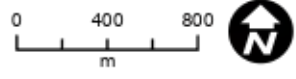


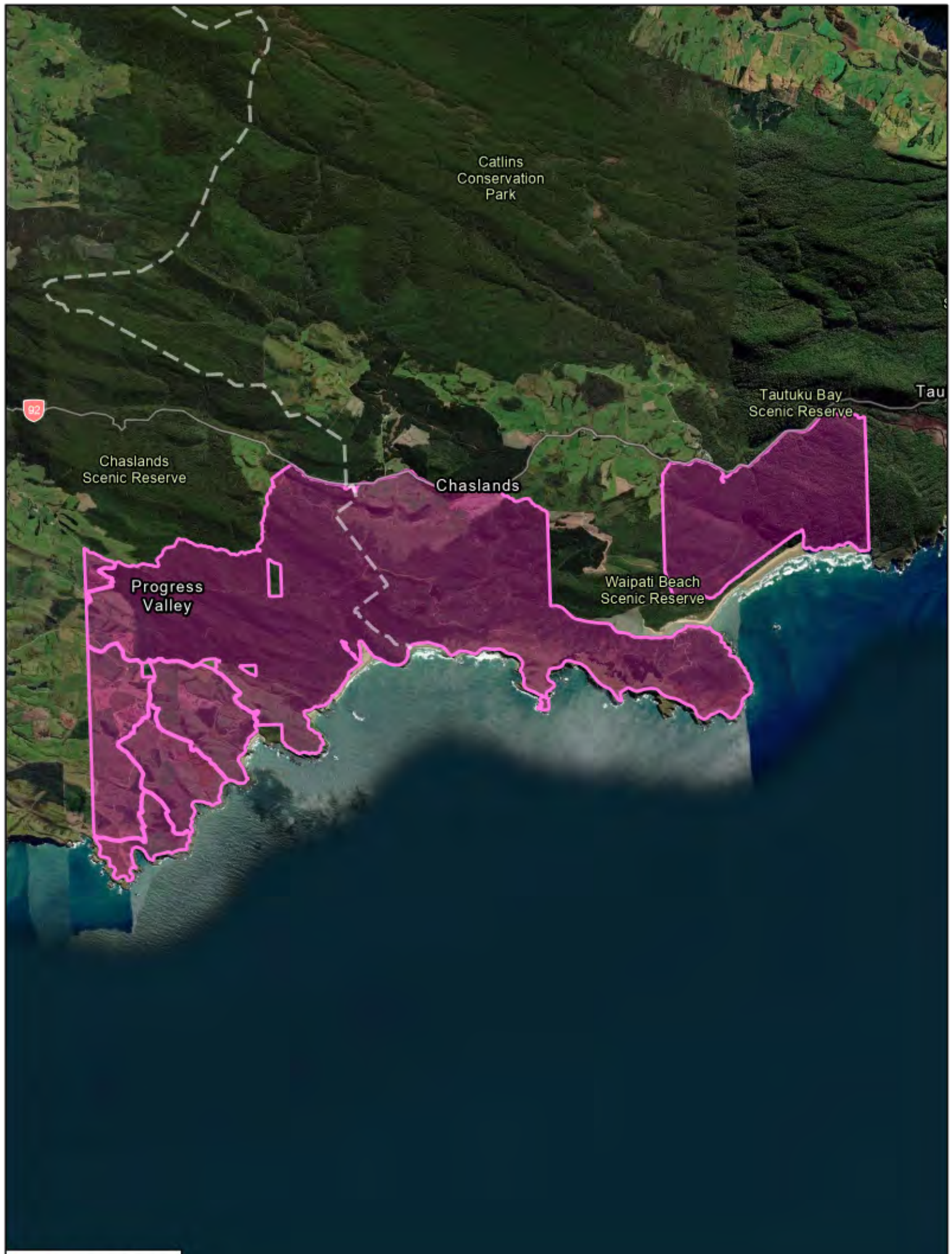



Reserve Areas



Taiari

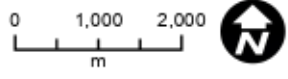




 Reserve Areas




Tautuku





Tautuku

Tautuku Bay  
Scenic Reserve

 Reserve Areas



Tautuku 2

